

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BRUCE BENSINGER,	:	
Plaintiff,	:	
	:	Civil Action
v.	:	
	:	No. 99-2208
VALLIERE FANROCK, et al.,	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

December 1, 1999

Presently before this Court in this Title 42 U.S.C. § 1983 action is Defendants Valliere Fanrack, Martin, Sgt., and Konamann, Sgt.'s ("Defendants") Motion for Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c). The Defendants' Motion will be assessed under the same standard as a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12 (b)(6). See Constitution Bank v. DiMarco, 816 F.Supp. 154, 156 (E.D. Pa. 1993).

In reviewing a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the district court must accept all well-pleaded allegations in the complaint as true and view them in the light most favorable to plaintiffs. See In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1420 (3d Cir. 1997). While a motion to dismiss may be treated as one for summary judgment if "matters outside the pleadings are presented to and not excluded by the court," Fed. R. Civ. P. 12(b)(6), the court may not consider items of information presented in briefs or memoranda of law without presentation in affidavit form, see Kramer v. Scientific Control Corp., 365 F. Supp. 780, 786 (E.D. Pa. 1973) (Bechtle, J.).

However, in light of the fact that Defendants have failed to supply the Court with any matters outside of the pleadings, the Court is not able to treat Defendants' Motion as one for Summary Judgment and therefore, will deny the Motion for Judgment on the Pleadings because, contrary to Defendants' contention, Plaintiff has stated a claim upon which relief can be granted.¹ Therefore, Defendants' Motion is denied.

An appropriate Order follows.

1. A pleading by a pro se plaintiff is held to a less stringent standard than a pleading drafted by a lawyer, and the Courts have an obligation to construe pro se pleadings more liberally. Hughes v. Roe, 449 U.S. 5, 9 (1980).

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ORDER

AND NOW, this 1st day of December, 1999, upon consideration of Defendants Valliere Fanrock, et al's Motion for Judgment on the Pleadings and Plaintiff Bruce Bensinger's response thereto, it is hereby ORDERED and DECREED that said Motion is DENIED.

BY THE COURT:

Ronald L. Buckwalter, J.